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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,502	08/03/2000	Charanpreet S. Bagga	6683.44US01	9162

23552 7590 06/10/2003  
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EXAMINER
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BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/10/2003

*10*

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/631,502	BAGGA ET AL.
Examiner	Art Unit	
Jessica R Baxter	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 04/02/2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 7-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 02 April 2003 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_      6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on April 2, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation “diagonal dimension” in line 14. It is unclear what is meant by this limitation. To be consistent with the language of the specification, change “diagonal dimension” to --distraction height--.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 7-13, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,685,673 to Jarvis.

Regarding claims 7, 22 and 23, Jarvis discloses a surgical instrument comprising a shaft (29), a working head (31) comprising a blade (FIGS. 9 and 11), a first cutting surface and a second cutting surface (34' and 39'), and a collecting element (32' and 33'), a blade having a first concave surface and first cutting edge and a second concave surface and a second cutting edge (FIG. 19), the blade edge at each end of the height dimension, and a diagonal dimension greater than the height dimension (FIG. 19).

Regarding claim 8, Jarvis discloses a collecting element at said leading end of said blade, the collecting element overlies a portion of the first concave surface (FIGS. 18 and 19).

Regarding claim 9, Jarvis discloses the structure that allows the cutting edges to have two different orientations, a cutting and a non-cutting orientation (Column 5 lines 9-13).

Regarding claim 10, Jarvis discloses a tapered surface of the collecting element and a collecting surface facing away from the blade (FIGS. 18 and 19).

Regarding claim 11, Jarvis discloses the first cutting edge is facing in a direction opposite the second cutting edge (FIG. 19 lip 34' and 39').

Regarding claim 12, Jarvis discloses that the collecting element has a peripheral surface that does not extend radially beyond the first and second cutting edges (FIG. 18).

Regarding claim 13, Jarvis discloses a handle (FIG. 17).

6. Claims 14, 15, 16, 20, 21, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,867,157 to McGurk-Burleson et al.

McGurk-Burleson discloses a curette comprising a shaft (instrument 211), a blade with an undulating configuration and first and second cutting edges (FIG. 14), and a collecting element (channels 90 and 91).

Regarding claim 15, McGurk-Burleson further discloses that the blade has a first concave region facing the opposite direction of the second concave region (FIG. 14).

Regarding claim 16, McGurk-Burleson discloses that the first concave region is adjacent a second convex region and the second concave region is adjacent a first convex region (FIG. 14).

Regarding claim 20, McGurk-Burleson discloses that the collecting element has a peripheral surface that does not extend radially beyond the first and second cutting edges (FIG. 14).

Regarding claim 21, McGurk-Burleson discloses a handle (FIG. 1).

#### *Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGurk-Burleson '157 in view of Jarvis '673.

McGurk-Burleson discloses the claimed invention except for the cutting edges having two different orientations, a cutting and a non-cutting orientation (Column 9 lines 8-39). Jarvis teaches that an auger -like device may be provided with a cutting and a non-cutting orientation (Column 5 lines 9-13) since it is well known in the art (Column 3 lines 10-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McGurk-Burleson with the cutting and non-cutting orientations of Jarvis, since it is well-known in the art to provide drills or curettes with the two different orientations of cutting and non-cutting.

***Response to Arguments***

9. Applicant's arguments filed April 2, 2003 have been fully considered but they are not persuasive.

Applicant argues that Jarvis discloses a blade that is cylindrical and circular in cross-section. The Examiner disagrees with this argument because any cross-section taken from FIGS. 18 and 20 are not going to be cylindrical or circular. These cross-sections are going to include the fluted sections. Therefore, any cross-section cannot be cylindrical or circular and the rejection of claims 7-13 over Jarvis '673 is proper.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Jessica R Baxter  
Examiner  
Art Unit 3731

rb  
June 9, 2003

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700